

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ANGEL HERNANDEZ

PLAINTIFF,

V.

THE OFFICE OF THE COMMISSIONER
OF BASEBALL AND MAJOR LEAGUE
BASEBALL, BLUE, INC.,

DEFENDANTS.

CASE NO: 18-CV-09035-JPO-GWG

DECLARATION OF JOE WEST

I, JOE WEST, hereby depose and state:

1. I am currently a Major League Baseball umpire. I entered the National League as an umpire in 1976, and joined the National League staff full time in 1978.
2. At this time, only one umpire in the history of baseball has worked more games than me in the Major Leagues.
3. I was also President of the World Umpire's Association (now known as the Major League Umpires Association), the union that is the collective bargaining unit for Major League umpires, from 2009 until 2019.
4. As a result of how long I have been around the game, and the positions in which I have served, I have personal knowledge of the career paths of Angel Hernandez and many other Major League Baseball umpires.
5. I worked on the same umpiring crew for several seasons with Angel Hernandez. In 1999, our crew consisted of Randy Marsh as the crew chief, myself, Angel Hernandez, and Larry Vanover. I also worked on a crew with Angel Hernandez in 2011.

EXHIBIT

2

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6. In 2011, I requested that Angel Hernandez be on my crew due to Angel's excellent on-field and off-field performance as an umpire.

7. Based on my observations of the on-field and off-field performances of Angel Hernandez during his time with me on my crew, at the very least by the time the 2011 season began Angel was qualified to be a permanent crew chief.

8. I have followed his career closely, and I know of nothing that has taken place since 2011 that would render Angel Hernandez unqualified to be a crew chief.

9. The qualifications to be an interim crew chief are the same as the qualifications to be a permanent crew chief, and the job responsibilities are the same whether the umpire is serving as an interim crew chief or a so-called permanent (as distinct from an "interim") crew chief.

10. In the period from 2011 forward, Angel Hernandez has been named an interim crew chief by MLB on several occasions, but never promoted to permanent crew chief.

11. During that time, several non-minority umpires with less experience than Angel Hernandez have been promoted to permanent crew chief.

12. During the period 2011 through 2018, several other minority umpires who also served as interim crew chiefs were also passed over for promotion to permanent crew chief in favor of white non-minority umpires with less experience.

13. In July 2019, after this lawsuit was filed, there was an on the field call made during a game between the Boston Red Sox and the Tampa Bay Rays in which Angel Hernandez was serving as interim crew chief, and MLB took the unusual step of initiating an investigation about it. As part of that investigation, MLB scheduled a telephone conference call in which Angel Hernandez was asked to participate and in which I also participated. That investigation and the phone call that MLB arranged to discuss the incident were particularly unusual because MLB had

swiftly overruled a protest made by one of the teams and had already upheld the rule decision that Angel Hernandez had made on the field.

14. I have seen many an umpire make a mistake, be it a rule mistake or a blatantly bad call, without MLB conducting any formal investigation. Tim McClelland, an excellent white non-minority umpire who is now retired, delayed a game 13 minutes due to a lineup card fiasco that could have been spotted before the game started. There was no investigation by MLB.

15. As recently as the 2019 World Series, Sam Holbrook made an interference call that was argued strenuously by the Washington Nationals manager. That game was delayed for over 10 minutes, with Sam Holbrook going to the headsets to speak to officials in MLB's replay center on a judgment call that was protested. Joe Torre was in attendance at that game, and after the game he communicated in substance that it was fine for umpires to double and triple check themselves, but that (in his opinion) the delay should not have lasted that long. Yet to the best of my knowledge there was no resulting investigation of Sam Holbrook, a white non-minority umpire (not to imply that there should have been, in spite of the delay to make sure the umpires got the right result occurring on a far bigger stage).

16. Nevertheless, even though MLB had already determined that the umpire crew headed by Angel Hernandez as interim crew chief during the July 2019 Red Sox/Rays game got the rule call right on the field, MLB proceeded with its investigation and I dialed into the telephone conference call that MLB had arranged.

17. I was on that telephone conference call along with the union's executive board, as well as Steven Gonzalez and Dan Halem, both of whom were lawyers working for MLB. Several others were also on the call, including Joe Torre and Angel Hernandez.

18. To the best of my recollection, no one on the telephone call was saying that Angel Hernandez and his crew had gotten the call wrong.

19. Nor was anyone on the call asserting that Angel Hernandez and his crew had violated the written instructions to umpires, which in 2019 included the following: "It is better to consult the rules and hold up the game ten minutes to decide a knotty problem than have a game thrown out on protest and replayed."

20. In fact, during that telephone conference call, Angel Hernandez was praised by Joe Torre for making the correct call, for also gathering his crew together to discuss a rule interpretation, and for taking the time to do so.

21. Early in the telephone conference call, Angel Hernandez was asked questions about that July 2019 game by MLB officials and their lawyers, and then another umpire who had been on the field for that game joined the telephone conference call.

22. I do not recall MLB ever asking Angel Hernandez – or me – to hang up or get off the call.

23. That telephone conference call was the first time and only time I have ever seen an umpire investigated when he was told by MLB that he had made the correct call on the field and that he had acted appropriately.

24. Sometime after the telephone conference call, I learned that Angel Hernandez had been removed as interim crew chief.

25. In my experience, even crew chiefs who had actually made clear errors in key situations were not subjected to an investigation or adverse action like what MLB did to Angel Hernandez – but none of those permanent crew chiefs for at least the last 20 years up through the 2019 season have been minorities.

26. I am also very familiar with MLB's response to an incident with Angel Hernandez in Cleveland in May of 2013 involving whether a ball hit by an Oakland Athletics player had cleared the fence.

27. Major League Baseball had first instituted replay on a widespread basis in 2013, and it was far different and more primitive than it is today.

28. At that time, the crew chief or interim crew chief when reviewing replay was required to view the replay on specific monitors installed in each ball park. While the crew chief or interim crew chief could communicate with the replay officials in New York, those replay officials were strictly prohibited by MLB from telling the umpires what they saw or what the call should be. It is my understanding that in 2013 the screens that the replay officials used in New York were in High Definition. During that same time period, my fellow umpires and I who were assigned to work particular games had been instructed to use the small non-high definition replay monitors that MLB had installed at all the ballparks. Therefore, back in 2013, it was very difficult and sometimes impossible to determine during replay reviews what had actually happened on the field using the deficient video that MLB made available to us for use in the replay process.

29. At that time, the ballpark in Cleveland had an outfield wall that had spectator bar barriers and an incline on top of the barrier fence.

30. In Cleveland (and in other MLB ballparks around the United States), the umpires' locker room included a wide screen television with HD. Yet MLB prohibited us from reviewing plays on that HD wide screen, and instead insisted that we were to view replays on the small monitor screen that MLB provided.

31. All umpires were instructed in 2013 that they could not reverse the call unless they saw clear and convincing evidence that the call made on the field was mistaken.

32. Thus, if Angel Hernandez and John Tumpane could not see by clear and convincing evidence that the call on the field was wrong using the small replay monitor provided by MLB, then the rules and instructions provided by MLB itself required them to uphold the call made on the field.

33. Nevertheless, on May 9, 2013, Joe Torre of MLB took the unusual step of issuing a public statement about the use of instant replay the prior night and inaccurately asserting that the "improper call" was "at the sole of discretion" of Angel Hernandez as crew chief:

"By rule, the decision to reverse a call by use of instant replay is at the sole discretion of the crew chief. In the opinion of Angel Hernandez, who was last night's crew chief, there was not clear and convincing evidence to overturn the decision on the field. It was a judgment call, and as such, it stands as final.

"Home and away broadcast feeds are available for all uses of instant replay, and they were available to the crew last night. Given what we saw, we recognize that an improper call was made. Perfection is an impossible standard in any endeavor, but our goal is always to get the calls right. Earlier this morning, we began the process of speaking with the crew to thoroughly review all the circumstances surrounding last night's decision."

34. Between 2011 and 2013, there were 68 full-time Major League umpire positions available, but that does not mean (a) that all of those positions were occupied each day of each season or (b) that there were only 68 individual human beings who were Major League umpires during that period. During that period, the actual number of full-time umpires actually serving fluctuated, with some umpires on the roster of Major League umpires actually working less than 50 games and some working no games at all. Also, if you count all of the umpires on the full-time roster at the beginning of the regular season, plus those who became full-time umpires during the season, the total you get would be more than 68 in some of those years. Any assumption that there were 68 full-time Major League umpires during the period 2011 through 2013 is not accurate.

35. Between 2014 and the present, there have been 76 full-time Major League umpire positions available, but that does not mean (a) that all of those positions were occupied each day

of each season or (b) that there have been only 76 individual human beings who have been Major League umpires during that period. During that period, including during the period 2014 through 2017, the actual number of full-time umpires actually serving has continued to fluctuate, with some umpires on the roster of Major League umpires actually working less than 50 games and some working no games at all. Also, if you count all of the umpires on the full-time roster at the beginning of the regular season during the period 2014 through 2017, plus those who became full-time umpires during the season, the total you get would be more than 76 in some of those years. Any assumption that there were 76 full-time Major League umpires during the period 2014 through 2017 is not accurate, and any assumption that there were 76 full-time Major League umpires during the period 2014 through the present is not accurate.

36. As a practical matter, during the period 2011 through 2017 the day-to-day interactions of individual umpires with the MLB Umpiring Department other than in the form of routine written communications were very limited.

37. I am not aware of any external factors, other than the voluntary conduct of MLB itself and its personnel, that explain why MLB failed to assign Angel Hernandez to the World Series during the period 2011 through 2017. To the best of my knowledge, there was never any contractual limitation in any version of the Basic Agreement or any other limitation imposed by the umpires' union that prevented MLB from assigning Angel Hernandez to the World Series, in the Basic Agreement or otherwise.

38. The umpires for the World Series are selected from among the umpires who worked in the Division Series in that same year. I am not aware of any external factors that explain why MLB selected Angel Hernandez to umpire in the Division Series in 2011, 2012, 2015, and 2017, but failed to assign Angel Hernandez to the World Series in any of those years. To the best of my

knowledge, there was never any contractual limitation in any version of the Basic Agreement or any other limitation imposed by the umpires' union that prevented MLB from assigning Angel Hernandez to the World Series, in the Basic Agreement or otherwise.

39. Nothing in any version of the Basic Agreement that was in effect during any portion of the period 2011 through 2017 placed any limits on MLB's obligation to comply with federal, state and local laws and ordinances prohibiting discrimination on the basis of race, ethnicity or national origin.

40. I advocated to MLB that crew chiefs be selected from among qualified applicants on the basis of seniority. It is more than possible to do that, and from the union's standpoint it was actually preferable that MLB do so. When MLB has done otherwise, that has caused friction among the other umpires. Any assumption or assertion that MLB was required to limit the importance of seniority in selecting crew chiefs at any point during the period 2011 through 2017 is not accurate.

41. Based on statements made to me by Joe Torre, MLB sometimes selects umpires for the World Series not solely based on MLB's determinations about who displayed the highest levels of performance that season and throughout their careers.

42. It is not a recognized practice in Major League Baseball that an umpire should or must issue a warning to a manager before ejecting a manager from the game.

43. Based on my direct personal observations of their conduct and demeanor, both Angel Hernandez and Kerwin Danley have displayed an innate ability to manage situations, and when either of them becomes involved in an argument the managers and players have usually had their say and then backed off.

44. All applications for promotion to crew chief do not result from the spontaneous initiative of the applicant. On at least one occasion, I was asked by an MLB official to urge a specific umpire to apply for the crew chief position – and that individual was a white non-minority umpire.

45. MLB has a long-standing practice by which it generally “has the backs” of its umpires. But MLB does not take up for all umpires in a nondiscriminatory manner, and I have observed that MLB has not defended the conduct of Angel Hernandez in the same way and to the same extent that MLB has defended the conduct of white non-minority umpires.

46. With limited or no support from MLB for his handling of controversial situations, Angel Hernandez has been metaphorically crucified in the media.

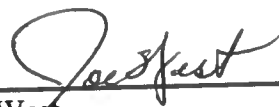
47. I am not aware of any external factors, other than the process MLB itself chose to implement, that explain why MLB failed to promote any minority to the position of permanent crew chief during the period 2000 through 2017. To the best of my knowledge, there was never any contractual limitation in any version of the Basic Agreement or any other limitation imposed by the umpires’ union that prevented MLB from promoting Angel Hernandez or other qualified minority umpires to the position of permanent crew chief, in the Basic Agreement or otherwise or any other limitations imposed by the umpires’ union that prevent MLB from assigning Angel Hernandez to the World Series in the Basic Agreement or otherwise.

48. Several MLB umpires died or otherwise left the game in the period between 2011 and 2017, including Bill Hohn (who announced his retirement in April 2012), Derryl Cousins (who retired before the 2013 season), Ed Rapuano (who retired before the 2013 season), Tim Tschida (who also retired before the 2013 season), Brian Runge (who retired from MLB during the 2013 season), Wally Bell (who died during the 2013 postseason), Gary Darling (who announced his

retirement during the 2014 season), Tim McClelland (who retired before the 2015 season), Paul Schrieber (who retired in 2015), Tim Welke (who retired before the start of the 2016 season), Bob Davidson (who retired at the end of the 2016 season), John Hirschbeck (who retired after the 2016 season), Jim Joyce (who retired before the start of the 2017 season), and Dale Scott (who retired in 2017).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of July, 2020 at Clermont, Florida.



Joe West